IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 1196 of 2003
In
SPECIAL CIVIL APPLICATION No. 9065 of 2002
With
CIVIL APPLICATION No. 8230 of 2003
In LETTERS PATENT APPEAL No. 1196 of 2003
With
CIVIL APPLICATION No. 3752 of 2003
In LETTERS PATENT APPEAL No. 1196 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE M.C.PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VAKO SEALS (UNIT NO.II) - Appellant(s)

Versus

GUJARAT RAJYA KAMDAR SENA & 1 - Respondent(s)

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Appearance :
MS SNEHA A JOSHI for Appellant(s) : 1,
MR DS VASAVADA for Respondent(s) : 1,
MR SIRAJ GORI, AGP for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE B.J.SHETHNA
and
HONOURABLE MR.JUSTICE M.C.PATEL

Date : 13/09/2005

ORAL JUDGMENT (Per : HONOURABLE MR.JUSTICE B.J.SHETHNA)

Gujarat Rajya Kamdar Sena – the petitioner filed writ petition i.e. Special Civil Application No.9065 of 2002 before this court under Article 226 of the Constitution and prayed that the Assistant Labour Commissioner – respondent no.1 be directed to initiate appropriate legal proceedings against Vako Seals (Unit-II) – respondent no.2 for breach of settlement and the provisions of Industrial Disputes Act and the unfair labour practice committed by it.

1.1 Initially, notice was ordered to be issued to the other side calling upon them to show cause as to why the petition should not be admitted. In response to the said notice, learned AGP Shri Digant Joshi appeared for the Assistant Labour Commissioner. Though served, no one appeared for respondent no.2 – Vako Seals. However, the learned Single Judge (Ravi R. Tripathi, J.) of this court, on 25th February, 2003, issued rule on the main writ petition i.e. Special Civil application No.9065 of 2002 and Mr. Digant Joshi, learned AGP waived service of rule for respondent no.1 and with the consent of the learned advocate for the petitioner as well as the respondent no.1 – Assistant Labour Commissioner, the

matter was taken up for final disposal and disposed of by a brief order which is as under.

SPECIAL CIVIL APPLICATION No 9065 of 2002

CORAM : MR.JUSTICE RAVI R. TRIPATHI

Date of Order : 25/02/2003

ORAL ORDER

The present petition is filed for the following reliefs :

"(a) xxx

(b) directing the respondent no.1 to initiate appropriate legal proceedings against respondent no.2 for breach of settlement and the provisions of the Industrial Disputes Act and the unfair labour practice being committed by the respondent no.2."

2. RULE. Mr. Digant P. Joshi, the learned Assistant Govt. Pleader waives service of rule. With the consent of the learned advocates, the matter is taken up for final disposal. Taking into consideration the contentions raised in the petition it is deemed fit that the present petition be allowed and respondent no.1 is hereby directed to take necessary action under the provisions of relevant labour

> laws including that of prosecution against respondent no.2 within outer limit of 30 (thirty) days. The petition is disposed of. Rule is made absolute to the aforesaid extent. No order as to costs.

1.2 From the above, it is clear that while issuing rule, fresh notice of rule was not issued to respondent no.2 – the main contesting party which was going to be affected by the order of the court. It is no doubt true that on earlier occasion, notice to show cause as to why the petition should not be admitted was duly served to respondent no.2 but then fresh notice was required to be issued, while issuing rule by the learned Single Judge of this court on the main petition and after the notice of rule was served, the learned Single Judge could have finally disposed of the matter. By not doing so, the respondent no.2 was deprived of his valuable right to represent his case before the learned Single Judge.

2. It was submitted by learned counsel Ms. Sneha Joshi for the appellant – original respondent no.2 that the company was closed down since 1999 and the respondent no.1 was in know of it but for the reasons best known to him, he had not pointed it out to the learned Single

Judge who had passed the order on 25th February, 2003 and disposed of the writ petition. Ms. Joshi further submitted that from the above order, it is clear that while allowing the writ petition and directing the respondent no.1 to take necessary action under the provisions of Labour Laws including that of prosecution against respondent no.2, the learned Single Judge has not assigned any reasons whatsoever. Therefore, the order passed by the learned Single Judge is required to be quashed and set aside.

3. However, learned counsel Shri Vasavada appearing for the present respondent no.1 – original petitioner submitted that the order dated 25th February, 2003 passed by the learned Single Judge in the main writ petition is already complied with by the original respondent no.1 – Assistant Labour Commissioner and criminal prosecution is also lodged. Therefore, this court should not entertain this appeal as though duly served with the notice in the main writ petition, the present appellant deliberately did not remain present before the court, therefore, the learned Single Judge was absolutely justified in issuing rule and allowing the petition on the same day without issuing notice of rule to original respondent no.2.

4. It may be that the order passed by the learned Single Judge in the main writ petition is complied with. It is also true that the original respondent no.2 was initially served with the notice of the court but it was a notice to show cause as to why the main petition should not be admitted. For any reason, the respondent no.2 could not remain present. Then in that case, before passing any adverse order, the learned Single Judge of this court was supposed to issue fresh notice of rule while admitting the petition and disposing it off finally. Passing any adverse order against a party would obviously be in breach of principle of natural justice. Therefore, though the order passed by the learned Single Judge is complied with by the Assistant Labour commissioner by initiating criminal proceedings against the appellant – original respondent no.2, the same is required to be quashed and set aside. In view of the above discussion, this appeal is allowed and the order dated 25th February, 2003 allowing the writ petition i.e. Special Civil Application No.9065 of 2002 passed by the learned Single Judge is hereby quashed and set aside. Consequence of it, any proceedings initiated against the appellant – original respondent no.2 would also not

survive. Once the order is set aside, then the only remedy is that the matter is required to be remitted to the learned Single Judge for finally deciding the same after hearing the original respondent no.2 – present appellant. Ms. Sneha Joshi for the appellant – original respondent no.2 stated that she will appear before the learned Single Judge in the main writ petition.

5. Accordingly, this appeal is allowed and the order dated 25th February, 2003 passed by the learned Single Judge allowing Special Civil Application No.9065 of 2002 for issuing certain directions to respondent no.1 is quashed and set aside. All consequential orders and proceedings are also quashed and set aside. The main writ petition i.e. Special Civil Application No.9065 of 2002 is remitted to the learned Single Judge which may be now posted for final disposal before the learned Single Judge taking up such matters on 21st September, 2005 as rule was already issued by the learned Single Judge on 25th February, 2003, after showing name of Ms. Sneha Joshi for the original respondent no.2. It goes without saying that the learned Single Judge will decide the writ petition after hearing all the learned counsel for the parties in accordance with law.

As the appeal is allowed, both the Civil Applications filed in it would not survive.

Direct Service permitted.

(B.J. Shethna, J.)

(M.C. Patel, J.)

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